

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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January 18, 2011

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RE: State of Delaware v. Jeffrey Johnson
ID No. 1008011029

Submitted: January 7, 2011
Decided: January 18, 2011

On Defendant's Motion to Suppress - **DENIED**

Dear Counsel:

After considering the letter submissions of counsel, the Court finds that there was reasonable articulable suspicion to stop the defendant, and the subsequent detention and search of the defendant was reasonable and justified in light of the facts of the case. As such, the defendant's motion to suppression will be denied.

The facts of the defendant's stop are undisputed. On August 13, 2010, at approximately 5:00 p.m. Detective Ballard of the Wilmington Police Department was dispatched to the area of 30th and Jefferson Street after the police had received a 911

call in which the caller indicated she had witnessed a fight in the area of 30th and Jefferson Street and that one of the individuals was armed with a gun. The caller gave a description of the individual with the gun as a black male with dark complexion and a beard wearing a blue or black baseball cap and a navy blue shirt.

When Detective Ballard arrived in the area he observed the defendant matching the description provided by the 911 caller. Detective Ballard exited his marked patrol vehicle, displayed his weapon and ordered the defendant to the ground. After the defendant was handcuffed he was searched for weapons and none were found. The defendant's pedigree information was subsequently obtained, and it was discovered that the defendant had several outstanding capiases and as such, the defendant was placed under arrest. A search of a bag the defendant was carrying led to the discovery of a bottle containing liquid codeine and a quantity of marijuana. In turn, the defendant has been charged with Possession With the Intent to Deliver the codeine and simple Possession of Marijuana.

After a hearing on the defendant's motion to suppress the Court ruled in open court that the officer had reasonable articulable suspicion to stop the defendant. The defendant was the only individual in the area matching the description provided, and the anonymous 911 caller had provided sufficiently detailed information to prevent an improper random stop. The Court requested additional briefing regarding whether the confrontation of the defendant by the officer at gunpoint and his subsequent handcuffing of the defendant elevated the legal detention to an arrest on which there was insufficient probable cause.

First, the Court finds that an officer can use reasonable force to detain the defendant when the information provided would indicate that the defendant was armed.¹ Here the officer was alone in a high crime area confronting an individual believed to be armed with a gun. Under these circumstances, the potential danger to the safety of the officer would justify the drawing of his weapon and the handcuffing of the defendant until a pat down had occurred. As such, the Court finds the officer's conduct to this point is justified.

The remaining issue is whether the subsequent search of a bag the defendant was carrying can be justified. It is important to note that at this juncture the defendant is secured, no weapon has been found and he is not in a position to harm the officer. If there is any concern about what may be in the bag, the defendant can

¹ *Caldwell v. State*, 780 A.2d 1037, 1051 (Del. 2001).

be moved away from the bag to eliminate the danger. Therefore, to find that the search of the bag is legal, some independent justification beyond the pat down must be found.

The Court believes this question turns on whether the search occurred before or after the officer learned of the outstanding capiases. If it occurred after, the search is justified as incident to a lawful arrest. If it occurred before, there is no probable cause to support the search.

At the suppression hearing Detective Ballard testified:

Q. Okay. And how long after you initially stopped the defendant did you find out that he had these capiases out?

A. Within no more than three minutes.

Q. And if, say, hypothetically you run his information and it comes back that he doesn't have any warrants or anything, what would you have done?

A. Send him on his way.

Q. Now, based on learning that he had a capias, what did you do?

A. At that point, knowing he was wanted multiple times, he was placed under arrest. He was in possession of a black bag, as well as having some property, a couple cell phones, about \$34 on him, a cigarette lighter. Inside the black bag was a plastic box that had a quantity of marijuana in it. He had a bottle, a white bottle, with a prescription in his name on it for Percocet pills that was issued, I believe it was two days prior for 120 pills. There was 24 left in the bottle. 97 were not in it. Additionally there was another pharmaceutical bottle in the defendant's name that had liquid codeine in it, a small amount, along with 13 medium sized glass bottles with black tops, nine of which had liquid codeine in them.

While the questioning on when the search occurred could have been more precise and artful, the sequencing of the question leads the Court to find that the search of the bag occurred after the police had learned that the defendant was wanted. It is clear that when the decision was made to arrest the defendant, it was based solely on the outstanding capiases and the officer had indicated that if there had been no capias history the defendant would have been released. Obviously, if the officer had already discovered the drugs the defendant would not have been released regardless of what was found when his record was searched for outstanding warrants. As such, it is reasonable to conclude from the officer's testimony that the search of the bag occurred after the officer had discovered the defendant's capias status and the search is justified as incident to a lawful arrest.

As a result of the above, the Court finds there was reasonable articulable suspicion to stop the defendant; the manner of the initial confrontation with the defendant was reasonable based on the information provided in the 911 call; and the search of the bag is justified as incidental to a lawful arrest. Therefore, the motion to suppress is denied.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp